

**CORBELLO v. DEVITO
CASE NO.: 2:08-cv-00867-RCJ-PAL**

**EXHIBIT 2 TO PLAINTIFF' MOTION TO COMPEL RE: WRITTEN DISCOVERY TO
FRANKIE VALLI AND ROBERT J. GAUDIO**

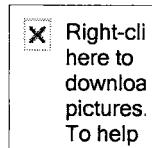
**CORBELLO v. DEVITO
CASE NO.: 2:08-cv-00867-RCJ-PAL**

**EXHIBIT 2 TO PLAINTIFF' MOTION TO COMPEL RE: WRITTEN DISCOVERY TO
FRANKIE VALLI AND ROBERT J. GAUDIO**

Bryan, Jennifer

From: McKirgan, Robert
Sent: Wednesday, December 22, 2010 3:19 PM
To: 'Daniel Mayeda'; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

I now think I understand your position. We will probably still file a motion as to Valli and Gaudio along the lines I just explained in our call.



Robert H. McKirgan
Partner
Lewis and Roca LLP • 19th Floor
40 North Central Avenue • Phoenix, Arizona 85004-4429
Tel (602) 262-5396 • Fax (602) 734-3874
RMckirgan@LRLaw.com • www.lewisandroca.com/Mckirgan



Please consider the environment before printing this e-mail.

From: Daniel Mayeda [mailto:dmayeda@lpsla.com]
Sent: Wednesday, December 22, 2010 3:51 PM
To: McKirgan, Robert; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

Bob,

Just got back from lunch.

Valli and Gaudio have produced everything they have. if and when Dodger produces additional docs (to plaintiff and to Valli/Gaudio), Valli/Gaudio will determine which relate to them and will rely upon them. Valli and Gaudio can't produce docs that are controlled by Dodger. Dodger's docs are subject to your conferences/negotiations/motion to compel. With Dodger docs, Valli's/Gaudio's accountants can prepare additional docs (that do not currently exist) and if/when those are done, they will be produced. Any/all docs that Valli/Gaudio and/or their expert will be relying upon will be produced as soon as it is in Valli's/Gaudio's possession.

I will phone you in a few minutes.

From: McKirgan, Robert [mailto:RMckirgan@LRLaw.com]
Sent: Wednesday, December 22, 2010 2:04 PM
To: Daniel Mayeda; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

Dan: I am not sure if I understand this. I just left you a vm to discuss.

On the one hand, you say that Valli and Gaudio have nothing further to produce. I also understand that Valli/Gaudio documents are to come from Dodger and they are not in Valli and Gaudio's possession.

But you end your email by saying "Valli and Gaudio will produce any and all documents not

previously produced that are provided to our experts within a reasonable amount of time after we have determined what those documents are."

The last sentence implies that Valli and Gaudio may have additional documents that they will provide to their experts but you just have not determined what those are yet. But I can not envision what documents they may provide to the expert that would be outside of our document requests; thus, those documents should be produced now, not later.

Alternatively, are you saying that you are waiting to get documents from Dodger and then you will determine which of those documents will be given to your expert? If that is the case, we would expect those documents to be produced by Dodger now.

I do not mean to be difficult but I am not understanding your message. I do want to avoid filing another motion if we can come to an understanding; but I don't have an understanding. Rather, I am confused by your response.

My bottom line is this-- I want to get the financial documents that we have requested (from Valli and Gaudio as well as Dodger). Whether or not the defendants share any of the requested documents with their experts is besides the point. The documents have been requested and should be produced now whether they are ultimately given to the defendants' experts or not. And for today's purposes, I am trying to determine if I need to direct a motion to Valli or Gaudio.

Please call so I can get some clarity. Thanks Dan, RHM.

**LEWIS
AND
ROCA
L.L.P.
LAWYERS**
Robert H. McKirgan
Partner
Lewis and Roca LLP • 19th Floor
40 North Central Avenue • Phoenix, Arizona 85004-4429
Tel (602) 262-5396 • Fax (602) 734-3874
RMcKirgan@RLLaw.com • www.lewisandroca.com/McKirgan

 Please consider the environment before printing this e-mail.

From: Daniel Mayeda [mailto:dmayeda@ipsla.com]
Sent: Wednesday, December 22, 2010 2:37 PM
To: McKirgan, Robert; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

Here are the facts:

Valli and Gaudio have no financial materials in their possession responsive to plaintiff's requests that relate to revenues, costs, etc. that they have not already produced. Valli and Gaudio are not themselves continuing to gather financial documents but they do know that Dodger has documents that would reflect on Valli/Gaudio revenues, costs, etc. and that such documents continue to be gathered, etc. Such documents may require analysis by Valli's and Gaudio's accountants to determine their specific relevance to Valli and Gaudio. I also know that such documents have been the subject of conferences and negotiations (and, apparently now, are the subject of plaintiff's motion to compel vs. Dodger). Valli and Gaudio also know that they do intend to rely on experts to do analysis and prepare reports but that has not yet been done.

Bottom line: you have all financial materials that Valli and Gaudio now have. There undoubtedly will be more to come but not until Dodger has compiled and produced them. At that point, Valli and Gaudio may be in a position to prepare additional documents relating specifically to Valli and Gaudio and, if such additional documents are created, we will produce them as soon as we have them. In addition, as indicated, Valli and Gaudio will produce any and all documents not previously produced that are provided to our experts within a reasonable amount of time after we have determined what those documents are.

From: McKirgan, Robert [mailto:RMcKirgan@LRLaw.com]
Sent: Tuesday, December 21, 2010 4:12 PM
To: Daniel Mayeda; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

Dan and David:

1. As to Dodger, we have our motion to compel and we continue to assert that the requested financial information from Dodger should be produced now. That issue is already with the Court.
2. As to Valli and Gaudio, your email suggests that they are still gathering financial related documents. Although you say you do not intend to defer production until expert reports (and we appreciate that), we need to have a date certain by which we will have the documents we have requested. I am concerned the "gathering" process will drag on and on, which it, in fact, has. Can you provide a date certain by which we will have these materials? Absent that, we may need to ask the Court to set a date certain.

Thanks, RHM.

LEWIS AND ROCA LLP LAWYERS
Robert H. McKirgan
Partner
Lewis and Roca LLP • 19th Floor
40 North Central Avenue • Phoenix, Arizona 85004-4429
Tel (602) 262-5396 • Fax (602) 734-3874
RMcKirgan@LRLaw.com • www.LewisandRoca.com/McKirgan

 Please consider the environment before printing this e-mail.

From: Daniel Mayeda [mailto:dmayeda@ipsla.com]
Sent: Tuesday, December 21, 2010 4:18 PM
To: McKirgan, Robert; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: RE: Valli and Gaudio discovery

Bob,

This will confirm that we have already produced a great deal of financial materials relating to revenues, income, costs and expenses; and whatever materials Valli and Gaudio provide to our accounting experts also will be produced to all parties; and that it is not our intent to defer such production until the date the expert reports are due. Instead, we continue to gather additional financial materials and within a reasonable amount of time after we determine which materials we will be providing to our experts, Valli and Gaudio will stamp and produce to all parties any and all materials that we have not already produced.

I have spoken to David and he concurs that the same is true for Dodgers. That is, Dodger is not withholding or deferring production of any financial materials that will be provided to our experts and will, within a reasonable amount of time after we determine which materials we will be providing to our experts, Dodger will stamp and produce to all parties any and all materials that we have not already produced.

Dan Mayeda

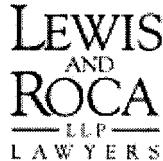
From: McKirgan, Robert [mailto:RMcKirgan@LRLaw.com]
Sent: Tuesday, December 21, 2010 2:21 PM
To: Daniel Mayeda; dkorzenik@mkslex.com
Cc: ggmark@radix.net; Paul, George; Krieger, John; Regalado, Edgar
Subject: Valli and Gaudio discovery

Following up on my call with Dan, I think we can forego filing a motion to compel as to Valli and Gaudio upon confirmation of my understanding discussed below.

Now that we have reviewed the supplemental responses by Valli and Gaudio, our only remaining issue relates to interrogatory #30 and RFP #'s 10 and 11 directed to them. I understand that you are not going to provide an accounting-- something you intend to have an expert do-- until your expert report is due. But, to the extent there are relevant documents reflecting revenues, costs and income, that should be produced now in response to our requests. In other words, whatever raw materials your expert is going to use to do the accounting should be produced now and not with the expert disclosure. Based on my conversation with Dan, that is my understanding of what you intend to do-- ie, you have produced or will be producing the relevant documents that you intend to produce in response to these requests and you will not defer production of such documents until the expert reports.

I understand that Dodger is objecting to producing certain documents (eg, the Quick Books data) that is the subject of our motion to compel directed to Dodger. But it seems to me that if you intend to provide your expert with the Quick Books data (and I do not know if you are or not) or any other financial documents, those should be produced to us now (and not deferred until the expert disclosure) as we have requested them. I assume, based upon the Dodger objections, that you do not intend to share with your expert the documents and data (eg, Quick Books data) that are the subject of the Dodger objections.

If I understand your position correctly, please confirm and we not file a motion as to Valli and Gaudio. If I have this wrong, please clarify. Please get back to me as soon as possible as any motion directed to Valli and Gaudio is due on Wednesday. Thanks, RHM.



Robert H. McKirgan
Partner
Lewis and Roca LLP • 19th Floor
40 North Central Avenue • Phoenix, Arizona 85004-4429
Tel (602) 262-5396 • Fax (602) 734-3874
RMcKirgan@LRLaw.com • www.lewisandroca.com/McKirgan



Please consider the environment before printing this e-mail.

For more information about Lewis and Roca LLP, please go to
www.lewisandroca.com.

Phoenix (602) 262-5311
Tucson (520) 622-2090
Las Vegas (702) 949-8200
Reno (775) 823-2900
Minden (775) 586-9500
Albuquerque (505) 764-5400
Silicon Valley (650) 391-1380

This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

In accordance with Internal Revenue Service Circular 230, we advise you that if this email contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.